IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 733 OF 2002.

Mohammed Kinhi Abdulla & others. ... Appellants.
Versus.
Hafiz Abdul Jain and another. ... Respondents.

Ms.Geeta Shastri i/by M/s.Khilnani & Co. for the Appellants.

Ms.Geeta Joglekar for the Respondent No.2.

CORAM : ABHAY S.OKA, J.

DATED : 16th March, 2007.

P.C.:

1. Heard the learned Advocate appearing for the Appellants and the learned Advocate for the 2nd Respondent. The office noting shows that the 1st Respondent is duly served.

2. The Appellants are the original Plaintiffs. In a suit filed by the Appellants, they had taken out a Notice of Motion for various reliefs. By order dated 16th July 2002, the Notice of Motion was rejected.

3. The case of the Appellants is that by a registered deed of assignment dated 18th November 1992, they became the owners of the business known as Cafe Golden Restaurant together the tenancy rights in respect of the said premises and they have been carrying on business therein. The 1st Respondent was allegedly an employee of the predecessor-in-title of the Appellants

and was looking after a pan shop abutting the hotel premises. In the suit the substantive prayer was for declaration that the first Respondent was a trespasser in the pan shop and for mandatory injunction for his removal. The 1st Respondent filed an affidavit-in-reply before the trial Court where he claimed to be the licensee of the previous owner of the hotel business.

4. In this Appeal, a Civil Application No.925 of 2002 was taken out on which an order was passed on 21st January 2003 by which the Court Receiver was appointed of the suit shop. This Court directed that initially the Court Receiver will offer agency to the 1st Respondent on the said Respondent executing necessary agreement and agreeing to deposit with the Court Receiver charges as may be fixed by the Receiver. This Court directed that on the failure of the 1st Respondent to execute the necessary agreement within the stipulated time, the agency will be offered to the Appellants.

5. It appears that the 1st Respondent could not take up the agency. There were two Civil Applications being Civil Application No.350 of 2003 and Civil Application No.483 of 2003 filed by both the parties for modification of the earlier order. The said Civil Applications were disposed of by order dated 28th April 2003 by this Court. By the said order, the Appellants

were appointed as the agents of the Court Receiver subject to various conditions incorporated in the said order.

6. The learned Advocate for the Appellants stated that the said order is still in force as of today and the Appellants are acting as the Agents of the Court Receiver and they have complied with all the necessary terms and conditions. She stated that the suit is ready for hearing and the Appellants have already filed their affidavit of examination-in-chief. It is further stated that the suit has not proceeded further in view of a Chamber Summons taken out by the 1st Respondent.

7. Now the suit is ready for hearing. Therefore, no purpose will be served for disturbing the interim arrangement which is operating on the basis of the order dated 28th April 2003. The interests of justice will be served if the said order is continued to operate till final hearing and disposal of the suit and the hearing of the suit is expedited.

8. Hence the following order is passed:

i) The Appeal is disposed of by directing that the interim order dated 28th April 2003 passed by this Court in Civil

Application No.483 of 2003 will continue to operate on the same terms and conditions, which are incorporated therein till the final disposal of the suit.

ii) The hearing of the suit is expedited.

iii) The trial Court will decide the suit uninfluenced by the impugned order as well as the order of this Court appointing the Appellants as agents of the Court Receiver.

iv) All contentions of the parties on merits of the suit are expressed kept open.

v) There will be no order as to costs.

Judge.